

<small>THE BOARD OF ESTIMATE AND APPORTIONMENT, THE CITY OF ST. LOUIS, MISSOURI, IS A PUBLIC BODY. THE BOARD OF ESTIMATE AND APPORTIONMENT, THE CITY OF ST. LOUIS, MISSOURI, IS A PUBLIC BODY. THE BOARD OF ESTIMATE AND APPORTIONMENT, THE CITY OF ST. LOUIS, MISSOURI, IS A PUBLIC BODY.</small>				
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St. Louis City Ordinance 65014

FLOOR SUBSTITUTE
BOARD BILL NO. [00] 84

INTRODUCED BY ALDERMAN JAMES F. SHREWSBURY

An ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller for the City of St. Louis (the "City") to enter into and execute on behalf of the City a Massage Therapy Concession Agreement (the "Agreement") at Lambert - St. Louis International Airport (the "Airport") between the City and "A BackRub Company," a corporation of the State of Missouri (the "Concessionaire"), granting to the Concessionaire, subject to the terms, covenants, and conditions of the Agreement, the non-exclusive right, license and privilege, to operate a Massage Therapy Concession within the premise at the Airport as more fully described in the Agreement, which was approved by the Airport Commission and the Board of Estimate and Apportionment and is attached hereto as ATTACHMENT "A" and made a part hereof; directing that the Agreement be in compliance with all applicable disadvantaged business enterprise requirements and in compliance with all applicable federal, state, and local laws, ordinances, regulations, court decisions and executive orders relating to equal employment opportunity; and containing an emergency clause.

WHEREAS, The City of St. Louis (the "City") now owns, operates, and maintains Lambert - St. Louis International Airport (the "Airport");

WHEREAS, "A BackRub Company," a corporation of the State of Missouri (the "Concessionaire") desires to enter into with the City a Massage Therapy Concession Agreement, which is attached hereto as ATTACHMENT "A" and incorporated herein;

WHEREAS, the Massage Therapy Concession Agreement is desirable for the proper accommodation of the traveling public;

WHEREAS, it is in the best interest of the City, the Airport, the traveling public, and others that the Concessionaire be a qualified operator of the Massage Therapy Concession;

WHEREAS, the City has determined that Concessionaire is a qualified operator of a Massage Therapy Concession; and

WHEREAS, the Agreement has been approved by the Airport Commission and the Board of Estimate and Apportionment.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City a Massage Therapy Concession Agreement (the "Agreement") at Lambert - St. Louis International Airport (the "Airport") between the City and "A BackRub Company," a corporation of the State of Missouri (the "Concessionaire"), granting to the Concessionaire, subject to the terms, covenants, and conditions of the Agreement, the non-exclusive right, license and privilege, to operate a Massage Therapy Concession within the premise at the Airport as more fully described in the Agreement, which was approved by the Airport Commission and the Board of Estimate and Apportionment and is to read in words and figures as set out in ATTACHMENT "A," which is attached hereto and made a part hereof.

SECTION TWO. The Agreement shall be in compliance with all applicable disadvantaged business enterprise requirements and in compliance with all applicable federal, state, and local laws ordinances, regulations, court decisions and executive orders relating to equal employment opportunity.

SECTION THREE. This being an ordinance for the preservation of public peace, health, or safety, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City Charter and shall become effective immediately upon its approval by the Mayor of the City.

"ATTACHMENT A"
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
A BACKRUB COMPANY
MASSAGE THERAPY
CONCESSION AGREEMENT
NO. AL-7

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EXHIBIT "A"

AIRPORT NUMBER: AL-7

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(MASSAGE THERAPY)

THIS AGREEMENT, made and entered into as of the day of , 2000 by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City") and A BackRub Company ("Concessionaire") a corporation of the State of Missouri.

WITNESSETH, That:

WHEREAS, City now owns, operates and maintains an international airport known as "Lambert-St. Louis International Airport", located in the County of St. Louis, Missouri ("Airport"); and

WHEREAS, a Massage Therapy Concession at the Airport is desirable for proper accommodation of the public;

WHEREAS, City has determined that it is in the public interest for the following objectives to be met in the provision of a Massage Therapy Concession:

- To provide first-class, full-service retail concessions that meets Airport user needs and

adds value to other Airport and airline services;

- To provide a high level of service at prices that are attractive to airport users and competitive with local prices;

- To provide retail concessions that are operated by well trained, efficient, courteous, and pleasant staff;
- To improve the appearance and design of the Airports retail facilities;
- To expand the volume of retail sales through innovative merchandising and planned promotion;

- To be responsive to Federal Aviation Administration goals for Disadvantaged Business Enterprise participation in concessions.

WHEREAS, City has advertised and received competitive Bids for the right to manage and operate a Massage Therapy Concession at the Airport, and by this process City has determined that Concessionaire is a qualified operator of this service and has submitted a Bid deemed advantageous to the public and City;

NOW, THEREFORE, for and in consideration of the promises, and of the mutual covenants and agreements herein contained, and other valuable considerations, City and Concessionaire agree as follows:

ARTICLE I DEFINITIONS

Section 101. Definitions. The following words and phrases shall have the following meanings:

"Agreement" shall mean this document (including exhibits) and any amendments thereto, duly approved by City.

"Airport" as stated in the preamble hereof.

"Airport Properties Department" shall mean that department of the St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, concessionaire and other space at the Airport, and shall be Concessionaire's point of contact with the Airport on all issues related to this Agreement.

"Build-Out Period" shall be a period of three (3) months commencing the first day of the month following full execution of the Agreement by the City. The Concessionaire shall pay to the City an amount equal to the Gross Revenue Percentage Fee for Contract Year One, in the event Concessionaire commences retail operations prior to the expiration of the Build-Out Period. The applicable provisions of Article V, Fees and Payments shall also apply to said amounts.

"City" as stated in the preamble hereof.

"Concessionaire" as stated in the preamble hereof.

"Concession Period" shall mean five (5) Contract Years following the Build-Out Period.

"Contract Year" shall be one of five (5) consecutive twelve-month periods commencing on the first day following the expiration of the Build-Out Period.

"Director" shall mean the Director of Airports of the Airport Authority of the City of St. Louis, and incorporates the granting of approval requirements of Section 1414 hereof.

"Disadvantaged Business Enterprise" or "DBE" shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are rebuttably presumed to be Women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other individuals or groups found to

be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended.

"Gross Revenue" shall mean the gross receipts from all sales made and services performed for cash or credit on the Airport, regardless of the point of origin or delivery of the order, and any other revenue of any type arising out of or in connection with Concessionaire's operations on the Airport, whether performed by Concessionaire, its subcontractors, subsidiaries, associated companies or otherwise. Only the following may be excluded or deducted, as the case may be, from Gross Revenues:

- Federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- Cash or credit refunds given to customers for services purchased at the Airport;
- The value of any supplies or equipment exchanged or transferred from or to other locations of Concessionaire's business not made for the purpose of avoiding a sale at the Airport;
- Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- The sale or trade-in value of any equipment or fixtures approved for removal by the Director and owned by Concessionaire.

"Metropolitan" shall mean the greater St. Louis metropolitan area.

"Minimum Guarantee" shall mean Concessionaire's minimum annual concession fee, as set out in Section 502 herein.

"Percentage Fee" shall mean the product of (i) Gross Revenue multiplied by (ii) the percentage as set out in Article V.

"Premises" shall mean a location or locations described in Section 201 that has or have been designated by City for the sale of Concessionaire's services and for other uses herein specifically provided for.

"Removable Fixtures" shall mean all furnishings, equipment and fixtures installed by Concessionaire, that are not permanently affixed to any wall, floor or ceiling in the Premises.

ARTICLE II PREMISES

Section 201. Premises. City hereby permits Concessionaire to use at the Airport the Premises as described on Exhibit "A," attached hereto and made a part hereof. The rights granted in Section 301 hereof may be exercised only on the Premises.

Concessionaire accepts the Premises "AS IS", with no warranties or representations of any kind, expressed or implied, either oral or written made by the City or any of its agents or representatives. City without limitations expressly disclaims and negates, as to the Premises: a) any implied or expressed warranty of merchantability; b) any implied or expressed warranty of fitness for a particular purpose; and c) any implied warranty with respect to the Premises or any portion thereof.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon notice to Concessionaire. Such changes will be made at the sole expense of Concessionaire and City will not be liable or responsible for any loss whatsoever including without limitation any inconvenience or loss by Concessionaire of work time, profit or business resulting from such changes.

Section 202. Access. Subject to the terms, covenants and conditions of this Agreement, Concessionaire has the right of free access, ingress to and egress from the Premises, for Concessionaire's employees, agents, guests, patrons and invitees.

ARTICLE III RIGHTS

Section 301. Rights. City hereby grants to Concessionaire, subject to all the terms, covenants and conditions of this Agreement, the non-exclusive right, license and privilege to operate a Massage Therapy Concession, including the sale of travel and

relaxation products, within the Premises. Concessionaire is not granted the right to offer for sale any other services or products. City does not envision, during the term hereof, to grant Massage Therapy Concession rights to any other entity that would be in direct competition with Concessionaire.

Section 302. Limitation of Rights. Concessionaire shall have no right to perform any services or offer for sale any products, or engage in any other business or commercial activity on the Airport except in the location approved under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by Concessionaire, Concessionaire will cease and desist from any further sale thereof immediately and not later than upon receipt of written notice from the Director.

This Agreement grants no real or implied rights to any Concession privileges on the Airport other than in the Premises.

ARTICLE IV TERM

Section 401. Term. The term of this Agreement shall consist of 63 months, which includes a Build-Out Period [three (3) months], followed by the Concession Period [five (5) Contract Years], unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration dates shall be written in the spaces below by the City.

Commencement Date _____

Expiration Date _____

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Concessionaire covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises, which in accordance with Section 708 may be restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and City shall have the right to take possession of the Premises with or without due process of law.

Section 403. Holdover Provision. If Concessionaire shall, with the prior written approval of the Director, hold over after the expiration of the term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be a tenant at will on a

month-to-month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Concession Fees as set forth herein, unless different fees shall be agreed upon, and shall be bound by all terms, covenants and conditions of this Agreement.

ARTICLE V FEES AND PAYMENT

Section 501. General. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Section 502 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Concession Fees. Concessionaire agrees to pay during the Concession Period, for each Contract Year, a sum equal to the greater of the Minimum Guarantee or the Gross Revenue Percentage Fee (Gross Revenue multiplied by the Percentage set out below).

<u>Year</u>	<u>Minimum Guarantee</u>	<u>Percentage</u>
1	\$30,000.00	10%
2	\$30,000.00	11%
3	\$30,000.00	12%
4	\$30,000.00	13%
5	\$30,000.00	14%

Section 503. Payment. Payments shall consist of (a) an amount equal to 1/12th the Minimum Guarantee, to be paid in advance on or before the first day of each month and (b) an amount equal to that portion of the Percentage Fee for the preceding month that is in excess of 1/12th the Minimum Guarantee, to be paid on or before the 15th day of the second and each succeeding month during the Concession Period. (See Section 505 Unpaid Fees for service charge.)

Section 504. Reports.

A. Concessionaire shall submit to City by the 15th day of the second and each succeeding month of the term hereof, two copies of an accurate statement of Gross Revenue. This statement must separately state Gross Revenue for sales of products and services for each facility and be certified as accurate by an officer of Concessionaire. The final statement

of Gross Revenue will be due by the 15th day of the month following expiration of this Agreement. City reserves the right to use these statements of Gross Revenue as a source of information to Bidders in a future solicitation for Bids for this concession.

B. Concessionaire shall submit an audit report of Gross Revenue within 120 days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Revenue, (ii) the calculation of the total amount payable to City based upon accumulated Gross Revenue for the Contract Year and the Percentage Fee, and (iii) the aggregate amount attributable to DBE participants, if any. The audit reports shall also include a schedule showing the total of actual payments to City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Revenue without exception.

If through such audit report, it is established that additional fees are due City, Concessionaire shall pay such additional fees to City not later than fifteen (15) days after completion of such statement and receipt of written notice from the Director. If it is established that Concessionaire has overpaid City, then such overpayment from Concessionaire shall be credited to the fees and charges next thereafter due from Concessionaire or paid to Concessionaire after the last Contract year.

C. Within thirty (30) days after the close of each Contract Year, Concessionaire shall provide City with an estimate of projected monthly Gross Revenue for the subsequent Contract Year (except the last Contract Year).

D. Concessionaire shall keep such records (copies of subcontracts, paid invoices, documentation of correspondence) as are necessary for the Airport Authority to determine compliance with the DBE participation requirement [at a minimum of three (3) years after the expiration or termination of this Agreement]. The Airport Authority reserves the right to investigate, monitor, audit and/or review records for compliance. The Concessionaire shall submit monthly DBE activity reports to the Airport Authority Contracts Administration/DBE Office with a copy to Airport Properties.

Section 505. Unpaid Fees. All unpaid fee payments due City hereunder will bear a service charge of 1 1/2% per month if same is not paid and received by City on or

before the 15th of the month in which said payments are due (see Section 503. Payment for due date), and Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees and litigation cost incurred or expended by City in collection of said delinquent amounts due, including services charges, within five (5) days of notice.

Section 506. Performance Bond. Concessionaire agrees to furnish a bond to City in the principal amount of \$7,500.00. Such bond will guarantee the payment of the Concession Fees and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A and with a "Best" Financial Size C Category of not less than Class VIII and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond will be kept in full force and effect during the term hereof. City may agree to another form of deposit that will provide equal protection of City's interest. If City cashes the Performance Bond, Concessionaire agrees to furnish a replacement bond in the same principal amount within 15 days.

Section 507. Prompt Payment of Taxes and Fees. Concessionaire covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 508. Accounting Records. Concessionaire will during the term hereof make available in the St. Louis area true, accurate, complete and auditable records of all business conducted by it at the Airport. Concessionaire will make same records available in the St. Louis area for at least three (3) years following the expiration or termination of this Agreement. These records will be accessible during usual business hours to City or its duly appointed agents or auditors.

Section 509. Additional Fees and Charges. Concessionaire will pay additional fees and charges under the following conditions:

- If City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse City.

- If City is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the conditions of this Agreement.

Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees and charges thereafter due hereunder. Each and every part of such payment will be recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees and charges as set forth herein.

For all purposes under this paragraph, and in any suit, action or proceeding of any kind between parties hereto, any receipt showing the payment of any sums or sum by City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 510. Notice, Place and Manner of Payment. Payments will be made at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as City may hereafter notify Concessionaire and will be made in legal tender of the United States.

ARTICLE VI CONCESSIONAIRE'S OPERATIONS

Section 601. Standards of Service. Concessionaire covenants and agrees to meet City's objectives as set out in the preamble hereof. Concessionaire shall furnish a first-class Massage Therapy Concession serving the needs of all users of the Airport, and offer prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Concessionaire and City. Concessionaire shall provide quality services and products and shall equip, organize, put into service and manage efficiently the Massage Therapy Concession to provide service with a clean, attractive and pleasant atmosphere.

Section 602. Hours of Operation. The minimum hours of operation for serving the public shall be thirty (30) minutes before departure of the first scheduled flight each day and until the departure of the last flight out each evening. The Concessionaire may not change the hours of operation without written application to and the written approval of the Director. The Director may require Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport. During

hours of non-operation, the location must be physically closed and locked by Concessionaire.

Section 603. Pricing.

A. ten percent (10%) greater than prices charged for identical products found in comparable Metropolitan locations. Products containing selling prices printed by the manufacturer are excluded and must be sold for no more than the published prices. For purposes of this Agreement, the comparable location shall be retailers who operate in greater St. Louis area malls no less than 200,000 square feet in size.

B. The Concessionaire submitted at the time of bid a complete list of all products proposed to be sold. This list shall contain the current Metropolitan price comparison, including the name of the comparison metropolitan location, and proposed selling prices that comply with paragraph (A) of this section for a minimum of twenty five percent (25%) of the products or services proposed to be sold. Concessionaire shall not include in its comparison products and services that are sold for the manufactures printed prices on the products. The proposed prices shall not be implemented until approved in writing by the Director. The award of the bid to the Concessionaire does not imply approval of Concessionaire's proposed product price list.

C. The Concessionaire shall not increase any prices without prior written approval of the Director. The Concessionaire's prices may normally only be increased following substantiation of cost price movements from vendors and a comparison of Metropolitan prices that indicate that Metropolitan area prices have increased. Any of Concessionaire's prices found to be more than ten percent (10%) greater than comparison prices shall be reduced to no more than ten percent (10%) greater than their Metropolitan location comparisons. The Director reserves the right to independently compare the Concessionaire's prices to Metropolitan prices and require the Concessionaire to reduce prices based upon its comparison.

D. A request for a price increase by the Concessionaire must include a complete schedule of all products/services and prices, including a comparison to Metropolitan prices of the products sold. This schedule shall include a brief description of all products and services to be

increased. All new products/services and prices must be added to the complete schedule of all products and prices and must be submitted in writing by the Concessionaire and approved in writing by the Director, prior to the sale of the new product(s)/service(s). The proposed prices for these products and services are subject to all pricing requirements of this Section. The Concessionaire shall give written notice to the Director of all products and services it intends to delete from the schedule. The Director reserves the right to deny the Concessionaire permission to delete any product or service from this schedule. Product additions and deletions may be proposed at any time. It is the Concessionaire's responsibility to ensure compliance with the price requirement of this section. Concessionaire's prices found to be more than ten percent (10%) greater than Metropolitan prices shall be reduced to no more than ten percent (10%) greater than their Metropolitan comparisons.

Section 604. Promotion and Marketing.

A. Concessionaire covenants that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method.

B. The Concessionaire submitted at time of bid a proposed promotion plan for the first Contract Year of the type and timing of sales promotion it intends to implement to publicize and promote the Massage Therapy Concession and increase sales. This plan shall include scheduled seasonal, theme, special event and general promotions. Opening of a shop shall be subject of special promotions. The Concessionaire shall indicate whether or not the increases in sales resulting from the promotional plan are indicated in gross sales estimates. The Concessionaire shall submit an update of its promotion plan sixty (60) days prior to each Contract Year.

C. The Concessionaire may offer a discount to its employees or those of subcontractors, the employees of the City or any of the City's tenants at the Airport, and to other volume purchasers or other special categories of customers. The amount of the discount is subject to the approval of the Director and must be submitted in writing. Discounts to employees of the City and employees of other tenants at the Airport (other than Concessionaires employees) must be on an equal and nondiscriminatory

basis. The Concessionaire must maintain records of all employee discounts given and produce these records to the Director upon request.

D. The Concessionaire shall arrange products in each shop within the Premises in such a manner that will maximize overall sales and Gross Revenue. The Director may require the Concessionaire to make specific changes to product locations and/or visibility if such efforts are not being effectively made by Concessionaire.

Section 605. Personnel.

A. Concessionaire shall require its employees to wear appropriate uniforms and badges to indicate the fact and nature of their employment.

Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this Massage Therapy Concession. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Concessionaire shall prohibit and restrain its agents, visitors and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

B. Employee parking will be offered as available in the Airport Employee Parking Lot at established rates.

C. Concessionaire shall provide staff in adequate numbers to provide a high level of service.

D. Concessionaire acknowledges and agrees that it will conduct an employee background check of each of its personnel who are employed in a facility located beyond a security checkpoint if required by the Federal Aviation Administration (FAA) and/or the Airport. Concessionaire recognizes and agrees that the security requirements may change and Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

Concessionaire understands and agrees that fines and/or penalties may be assessed by the Federal Aviation Administration for Concessionaire's noncompliance with the

provisions of 14 CFR ♦ 107 (1988) or other applicable law or regulation and shall promptly be reimbursed to City by Concessionaire.

Section 606. Manager. Concessionaire shall at all times retain one or more qualified, competent and experienced manager who shall manage and supervise the operations and the facilities and represent and act for Concessionaire. The manager shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence. Management personnel must be readily accessible for all hours the Concessionaire is in operation.

Section 607. Deliveries. Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving dock with other users. All deliveries are the responsibility of Concessionaire and not the Airport. The Concessionaire shall use only delivery carts equipped with pneumatic tires and rubber bumpers. Carts shall not have any exposed brackets or bolts.

Section 608. Record Keeping. Concessionaire agrees to provide for the collection of all monies and provide accounting, audit and reports of Gross Revenue as required by Article IV of this Agreement. In addition, Concessionaire shall ensure that a point of sale system is provided which is capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Concessionaire and DBE participant(s), if any, for each facility under this Agreement (these records are to be retained by Concessionaire for a minimum of three (3) years).

Section 609. Transition Period. During any future transition of the Massage Therapy Concession to another concessionaire, if applicable, Concessionaire shall use its best efforts to assure a smooth transition. Concessionaire agrees to closely coordinate the planning and execution of the transition with the Director.

Section 610. Operation.

A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, Concessionaire will provide and is responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies.

B. City shall not be responsible for any goods, merchandise or equipment used, maintained or stored at the facility, nor will it be responsible for damage to such goods or merchandise resulting from flood, fire, explosion, vandalism or other causes outside the control of City.

Section 611. Communication.

A. Concessionaire's local manager shall schedule quarterly or monthly meetings with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues which may affect Concessionaire's operation at the Airport. Concessionaire shall also be available for meetings at other times as necessary.

B. Concessionaire shall be responsible for notifying the Airport Properties Department of any problem which reduces service levels or sales or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

Section 612. Adult Materials. All adult materials, as defined by the Director, will be handled in a discrete manner so as not to offend the public. The Concessionaire agrees to handle all adult materials in a manner prescribed by the Director. The Concessionaire agrees to remove all adult materials that the Director requests it to remove and the Concessionaire will not sell such materials again after it is ordered removed by the Director.

Section 613. Customer Complaints. Concessionaire will establish procedures for handling all customer complaints. Concessionaire will respond in writing to every complaint (written or oral), within seven (7) calendar days, to the complainant and make a good faith attempt to explain, resolve or rectify the cause of the complaint. Concessionaire will provide the Director a copy of each such complaint and its written response thereto. Concessionaire will also provide the Director a monthly summary of complaints received together with the resolution/disposition of the complaints.

Section 614. Interference to Air Navigation. Concessionaire agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation regulations or subsequent and additional regulations of the Federal Aviation Administration, will be constructed or permitted to remain on the Premises. Any obstructions will be removed by Concessionaire at its expense. Concessionaire agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Concessionaire further agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by Concessionaire.

- A. Concessionaire takes the Premises "AS IS" and agrees, at Concessionaire's sole cost and expense, to ("Build-out") demolish existing improvements as required and design, erect, install, construct, equip, and furnish the Improvements in the Premises in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VII.
- B. Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
- C. Concessionaire shall submit a signed Tenant Construction or Alteration Application (TCA) including complete construction drawings and specifications, as required by Section 702, to the Airport Properties Department. If construction or refurbishment is proposed in Bid, TCA shall be submitted not more than 30 days following full execution of the Agreement by City.
- D. Concessionaire shall submit a St. Louis County building permit number not more than 30 days following approval of the TCA to the Airport Properties Department.
- E. Concessionaire shall submit the contractor's liability insurance certificates and performance and payment Bonds, required by Sections 704 and 705, to the Airport Properties Department not more than 45 days following the TCA approval by the Airport Properties Department prior to commencement of work.
- F. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Department, as required by Section 706, prior to occupancy of premises.
- G. In the event the Concessionaire encounters materials believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the

affected area shall not thereafter be resumed except by written agreement of the Director if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and the Concessionaire. The Concessionaire shall not be required to perform without consent any work relating to asbestos or PCB.

Section 702. Preparation of Plans and Specifications. Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises, prepared in accordance with the Tenant Design Standards. Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director and a St. Louis County building permit.

Section 703. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include City and its Airport Commission, Board of Aldermen, officers, employees and agents as an "Additional Insured." Said insurance shall be in a form agreeable to City, and certificates showing proof of coverage shall be delivered to the Director.

Section 704. Performance and Payment Bonds. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo as amended. Copies of the bonds shall be given to City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 705. Mechanics' and Materialmen's Liens. Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 706. Certificates of Completion. Upon the completion of improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 707. Signs.

A. Concessionaire shall not, without the prior written approval of the Director erect, maintain or display any signs on the Premises. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such identification signs as may be necessary for the proper conduct of a Massage Therapy Concession service as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. Concessionaire shall be responsible for the cost of any modifications to the Airport directories and other signs. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707.

C. Prior to the erection, construction or placing of any sign, Concessionaire shall submit to the Director for approval, drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.

D. Concessionaire shall not obstruct its counter space with advertising matter, displays or other literature not directly pertaining to its Massage Therapy Concession services. Concessionaire will not place any signs outside of the Premises.

Section 708. Title to Improvements and Fixtures. All improvements constructed or placed in the Premises by Concessionaire that are not Removable Fixtures, and all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting in City upon expiration or earlier termination of this Agreement; subject, however, to Concessionaire's obligation to operate, repair, maintain and

replace, and its right of possession, use and occupancy during the term and in accordance with the Agreement.

All Removable Fixtures shall remain the property of Concessionaire, and shall be removed by Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such Removable Fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

City reserves the right and Concessionaire agrees that the Director may require Concessionaire to restore the Premises to the condition that originally existed at the time Concessionaire took possession of the Premises. Concessionaire agrees to bear all costs of such removals and restorations.

Section 709. Cost of Improvements. The Concessionaire shall furnish the Director with satisfactory proof of Build-Out Costs within sixty (60) days following completion of work to the Premises. This proof of costs must include, at a minimum, an itemized account of all included costs supported by invoices and cancelled checks and certified as accurate by an independent Certified Public Accountant. The Concessionaire shall provide to the Director any other proof necessary to satisfy the Director.

Section 710. Reimbursement of Build-Out Costs. In the event of relocation of the Premises by the City, the City shall pay to the Concessionaire the Unamortized Investment Concessionaire has made in Improvements to the relocated Premises or portions thereof. The City shall be entitled to inspect the Improvements, and if this inspection reveals missing or damaged items, the Unamortized Investment shall be reduced by an amount equal to the cost of the replacement or repair of missing or damaged Improvements. Title to the Improvements shall pass to the City immediately upon payment of the Unamortized Investment.

ARTICLE VIII USE OF PREMISES

Section 801. Compliance with Laws and Regulations. Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises

or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

Section 802. Repairs and Maintenance. Concessionaire will provide and pay for all repairs and maintenance of the Premises, except the following, which shall be the responsibility of City:

- A. The structural components of the building.
- B. The utility system to, and within, the Premises, except where the utility systems are owned or controlled by the utility companies.
- C. The washing of the exterior of windows in the terminal building.

Concessionaire will perform the following functions as part of its responsibilities in the repair and maintenance of the Premises. The following list includes certain functions but Concessionaire's responsibilities are not limited to those functions:

- A. Perform custodial services daily.
- B. Perform all needed maintenance and repair of the equipment and fixtures provided by Concessionaire.
- C. Keep premises free from all fire and other hazards to persons and property, and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or Concessionaire's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid). Concessionaire may not dispose of any such items in the public areas. This may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by these requirements. Concessionaire will inform the Airport Properties Department of its methods of handling and disposal of trash, garbage and refuse.
- F. Confine all handling and holding of Concessionaire's property to the premises.

G. Keep all papers and debris picked up daily from the Premises.

H. Keep Premises free of all pests and provide pest control services as needed.

I. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges City from any and all claims or causes of action arising out of the closing of any right-of-way.

Section 803. Right to Enter, Inspect and Make Repairs. City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is reasonably practicable) to enter upon and in the Premises for the following purposes:

A. To inspect such premises to determine whether Concessionaire has complied and is complying with the terms and conditions of this Agreement.

B. To perform maintenance and make repairs in any case where Concessionaire is obligated, but has failed to do so, after City has given Concessionaire notice so to do, in which event Concessionaire shall reimburse City for the cost thereof plus a charge of 15% for overhead promptly upon demand.

C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

In case of emergency, City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right to enter the Premises by whatever means necessary to remedy the emergency situation and without liability to Concessionaire for any damage related thereto.

Section 804. Utilities. City will provide and pay for heated and chilled air to the Premises. City shall provide and Concessionaire shall pay for electricity at a cost based upon metered usage. Concessionaire shall provide and pay for other utilities it

requires. The Concessionaire shall be responsible for the cost of an electric meter and socket and all connections to and within the Premises. The concessionaire shall be responsible for any necessary upgrade in the electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

City shall not be liable to Concessionaire in damages or otherwise of any kind whatsoever for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service.

ARTICLE IX

LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. Concessionaire, at its expense, at all times during the term hereof, shall cause City and its Board of Aldermen, Airport Commission, officers, agents and employees and Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Concessionaire, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors pursuant to this Agreement under the following types of coverage:

1. Comprehensive General Liability;
2. Comprehensive Automobile Liability (any vehicles, including owned, hired and non-owned).

The minimum limits of coverage for the above classes of insurance shall equal a single limit of \$3,000,000 comprised of such primary and excess policies of insurance as Concessionaire finds it feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees shall be included as an "Additional Insured". Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Concessionaire, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors. Such coverages shall also extend to contractual liability insurance sufficient to cover Concessionaire's indemnity obligations hereunder. City and its Board of Aldermen, Airport Commission, officers, agents and employees shall

have no liability for any premiums charged for such coverage, and the inclusion of City and its Board of Aldermen, Airport Commission, officers, agents and employees as an "Additional Insured" is not intended to, and shall not, make City and its Board of Aldermen, Airport Commission, officers, agents and employees a partner or joint venturer with Concessionaire in its operations hereunder.

Concessionaire will maintain, and upon request furnish evidence to City, adequate provisions for Worker's Compensation Insurance, Social Security and Unemployment Compensation at statutory limits and to the extent such provisions are applicable to Concessionaire's operations hereunder.

Section 902. Property Insurance. Concessionaire will provide fire and related insurance coverage for the full value of the improvements and equipment it installed on the Premises.

Section 903. Damage or Destruction of Terminal Building. The building in which the Premises are located will be insured by City under a policy of fire and extended coverage.

If the building is destroyed or damaged to such an extent as to be uneconomically repairable, City may terminate this Agreement by written notice to Concessionaire.

If the building is repairable, City will begin such repairs as soon as is practicable. City will attempt to find temporary Premises during the repair. City will not be liable or responsible for any inconvenience or loss of any kind whatsoever, including the loss by Concessionaire of business resulting from such damage.

Section 904. Evidence of Insurance. Certificates, or other evidence of insurance coverage required of Concessionaire in this Article, shall be delivered to the Director in form and content satisfactory to City.

At least 15 days prior to the expiration of any such policy, Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall within 15 days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and in a company or companies approved by City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered

or canceled by the insurer during its term without first giving 30 days notice to the Director. Each such insurance policy shall also provide primary coverage to the City, its Board of Aldermen, Airport Commission, officers, agents and employees. When any policy issued to them provides duplicate or similar coverage and in such circumstances their policy will be excess over Concessionaire's policy.

Section 905. Indemnification. Concessionaire shall protect, defend, and hold St. Louis County, City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Premises or the acts or omissions of Concessionaire's officers, agents, employees, contractors, subcontractors, independent contractors, licensees, or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City. The Director or his designee shall give to Concessionaire reasonable notice of any such claims or actions. Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City or his designee, after consultation with the Airport Director or his designee, after consultation with the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 906. Adjustment of Claims. Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of Concessionaire under this Agreement.

Section 907. Occupancy of Premises. Concessionaire agrees that it will not permit any act of omission or commission or condition to exist on the Premises which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

Section 908. Waiver of Subrogation. Concessionaire on behalf of itself and its insurers, hereby waive any claim or right of recovery from the City, its Board of Aldermen, Airport Commission, officers, agents and employees for any loss or damage to Concessionaire's officers, agents, or employees or its property or the property of others under Concessionaire's control, to the extent that such loss is covered by a valid insurance policy. Concessionaire shall provide notice of this waiver of subrogation to its insurer(s).

ARTICLE X

ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment. Concessionaire shall not assign this Agreement. Any such transfer or assignment shall constitute a default on the part of the Concessionaire under this Agreement. No action or failure to act on the part of any officer, agent or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

Section 1002. Subcontracting. Concessionaire shall not subcontract or sublet the Premises, or any portion thereof except as may be required to secure DBE participation and only with the prior written approval of the City. The parties understand and agree that Concessionaire is responsible for the performance of its subcontractors under this Agreement. Such subcontract must require, at a minimum, the strict compliance with all provisions of this Agreement and that subcontractor will use the Premises solely for the purposes identified in this Agreement.

Section 1003. Bankruptcy. In the event that there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after notice thereof given in writing to exercise the City's option hereby given to end the term on the date which shall be no sooner than forty-five (45) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee or assignee any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

ARTICLE XI

TERMINATION OF AGREEMENT IN ENTIRETY

Section 1101. City's Right to Terminate. City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, upon the happening of, but not limited to, any one or more of the following events.

A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, Concessionaire shall:

1. apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
2. file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
3. make a general assignment for the benefit of creditors;
4. file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
5. file an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Concessionaire as bankrupt or insolvent, or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days;
6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
7. fail to prevent cessation or deterioration of service for a period which, in the opinion of the Director, materially and adversely affects

the overall performance of Concessionaire under this Agreement;

8. allow a lien to be filed against Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of Concessionaire and is not removed or enjoined within thirty (30) days;

9. desert, vacate or discontinue all or a portion of its operation of the Premises which, in the opinion of the Director, results in a failure to provide the public and others the service contemplated hereunder;

10. fail to meet the DBE goal as described in Article XII of this Agreement;

11. fail in the performance of any terms, covenants or conditions herein required to be performed by Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof.

This Agreement shall be considered in default when Concessionaire fails to comply with any of the terms, covenants or conditions of this Agreement. Failure of City to take any authorized action upon default by Concessionaire of any of the terms, covenants or conditions required to be performed, kept and observed by Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by City from Concessionaire for any period or periods after a default by Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by Concessionaire shall not be deemed a waiver or estopping of any right on the part of City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

Section 1102. Concessionaire's Right to Terminate. Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, for the following causes:

A. if a court of competent jurisdiction issues an injunction or restraining order against City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.

B. if City shall have abandoned the Airport for a period of at least 60 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

C. in the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that an agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport, and any of said events shall result in material interference with Concessionaire's normal business operations or substantial diminution of Concessionaire's gross revenue from the operation at the Airport, continuing for a period in excess of 60 days.

D. if City shall have failed in the performance of any specific covenant within the control of City and required by this Agreement to be performed by City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than 45 days have elapsed after notice by either party to the other specifying the date and cause of termination, except that for Concessionaire's failure to make any payments specified in Section 1101 (A) or provide the insurance specified in Article IX, the effective date of termination shall be 45 days from the payment(s) due date with notice to Concessionaire or 30 days from the date insurance is not provided with notice to Concessionaire; and no such termination, except for termination for Concessionaire's failure to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such 45 day period, (2) commences to correct such default within said 45 days and (3) corrects the same as promptly as is reasonably practicable.

In the event that suit shall be instituted by City upon the default of payment of charges and fees as provided herein, then Concessionaire agrees also to pay a reasonable attorney's fee and cost of litigation.

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of City and Concessionaire specified in this Article are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto.

ARTICLE XII

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Section 1201. Compliance.

A. Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than 30% of the total Gross Revenues earned in the exercise of the concession rights granted in Section 302. This goal remains in effect throughout the term of the Agreement. Credit toward the DBE goal will only be given for the use of DBE's certified by processes acceptable to the Director. Concessionaire submitted at time of Bid a DBE participation plan which detailed the method(s) and percentage of DBE participation it offers in the performance of this Agreement. This DBE participation plan must be approved in writing by the Director before it may be implemented. Concessionaire is obligated to meet the minimum 30% DBE participation or the amount of participation detailed in its DBE participation plan as approved by the Director.

B. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 26. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR part 26.

Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

C. Substitutions of DBE's must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to

perform due to default of its subcontract or agreement. Concessionaire understands, warrants and agrees that it shall not amend or terminate its agreement with the DBE without cause and shall timely forward supporting documentation substantiating the cause of the default or termination to the Director for review. Concessionaire shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be located, Concessionaire must make good faith efforts to subcontract or contract out for other rights to secure DBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

D. Concessionaire shall operate its Massage Therapy Concession in compliance with all other requirements imposed by or pursuant to 49 CFR Part 26, as applicable and as said regulations may be amended or new regulations promulgated, and the St. Louis Airport Authority's Contracts Administration/DBE Program. Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, City shall have the right to terminate this Agreement and to re-enter and repossess the Premises thereon and hold the same as if this Agreement had never been made or issued.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from Section 1201, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

ARTICLE XIII

LIQUIDATED DAMAGES

Section 1301. Liquidated Damages. Concessionaire recognizes and hereby agrees and stipulates that the City will lose revenue and/or incur certain cost or expenses, the amounts of which are difficult to ascertain, if the Concessionaire violates any of the terms, covenants, or conditions enumerated below. Therefore, the Concessionaire agrees and stipulates that the Director of Airports, on behalf of the City, may elect (after written notice to the Concessionaire of said violation) to impose the charges in amounts described below as liquidated damages on the basis of each violation per day:

VIOLATION	SECTION	CHARGE
Violation of Article III, Rights Clause	301 – 302	\$100.00
Violation of Article VI, Concessionaire’s Operation Clause	602 – 609	\$150.00
Violation of Article VII, Improvements and Alterations Clause	707	\$150.00
Violation of Article VIII, Use of Premises Clause	802	\$100.00

The parties hereby stipulate and agree that time is of the essence in this Agreement and that charges provided for within this section shall be deemed liquidated damages and not a penalty or fine and the City may elect, alternatively, to pursue any remedy at law or in equity. Liquidated Damages shall be due upon receipt of notice and each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic Concession Fee as set for in ARTICLE V of this Agreement.

ARTICLE XIV MISCELLANEOUS PROVISIONS

Section 1401. Notice. Except as herein otherwise expressly provided, all notices required to be given to City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, 10701 Lambert International Boulevard, St. Louis, MO 63145, with a copy to the Airport Properties Manager at the same address. All notices, demands, and requests by City to Concessionaire shall be sent by certified mail, return receipt requested addressed to:

A BackRub Company

Mrs. Cheryl Wasserman, Vice President

2124 St. Louis Galleria

St. Louis, MO 63117

The parties or either of them may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to Concessionaire or said Director.

Section 1402. Conditions of Default. This Agreement shall be considered in default when Concessionaire fails to fulfill any of the terms, covenants or conditions of this Agreement and such default shall be considered a material breach of this Agreement for which the City at its option may terminate this Agreement as provided for in ARTICLE XI of this Agreement.

Section 1403. Non-Discrimination and Affirmative Action Program.

A. Concessionaire hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21, Subtitle A of Title 49 of the Code of Federal Regulations. Concessionaire hereby agrees that his premises shall be posted to such effect as required by such regulation.

B. Concessionaire agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.

C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.

D. Concessionaire agrees that should it be determined by Concessionaire or City that he will be unable to conform to his approved positive

employment program submitted to determine eligibility under the fair employment practices provisions of City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of his program.

E. Concessionaire will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.

F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

G. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within 10 days.

H. Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

I. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered sub-organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require

assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1404. No Personal Liability. No Alderman, Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1405. Force Majeure. Neither City nor Concessionaire shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which is not within its control. A "Year 2000 problem," as defined in Section 1423 of this Agreement, is not intended by the parties hereto to be covered by this clause.

Section 1406. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1407. Quiet Enjoyment. Subject to the provisions of the Agreement, City covenants that Concessionaire on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the premises.

Section 1408. Operation and Maintenance of Airport. City shall at all times operate the Airport properly and in a sound and economical manner; and City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use

reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1409. Title to Site. The premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by City or in such lesser estate as in the opinion of City Counselor is sufficient to permit the letting thereof by City as herein provided for the full term provided in this Agreement.

Section 1410. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1411. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document; Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable City to obtain said Federal Aviation Administration funds.

Section 1412. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the Charter of the City of St. Louis.

Section 1413. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1414. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1415. Withholding Required Approvals. Whenever the approval of City, or the Director, or of Concessionaire is required herein, no such approval shall be unreasonably requested or withheld. Whenever the approval of City is required, the approval must be in writing and the approving official is the Director or the person duly designated to perform one or more of the Director of Airport's duties under this Agreement.

Section 1416. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the

terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

Section 1417. Invalid Provisions. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either City or Concessionaire in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1418. Americans with Disabilities Act (ADA). Concessionaire shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to Concessionaire's services.

Section 1419. Not a Lease. This Agreement is not a lease and the right to use the Premises is entirely dependent upon the rights and privileges granted hereunder, and Concessionaire will in no instance be deemed to have acquired any possessory rights against City or the Premises or be deemed to be a tenant of City.

Section 1420. Advertising. Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1421. Conflicts Between Tenants. In the event of a conflict between Concessionaire and any other tenant, licensee or concessionaire, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Concessionaire agrees to be bound by such decision. All determinations by the Director are final.

Section 1422. Prevailing Wage. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with City of St. Louis Ordinance No. 62124.

Section 1423. Entire Agreement. This Agreement, together with all exhibits attached hereto and the Instructions to Bidders and Concessionaire's Bid which are incorporated herein by reference, constitutes the entire Agreement between the parties

hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto. In the event of any inconsistency or conflict between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- a. Agreement.
- b. Exhibits and Attachments to Agreement.
- c. Concessionaire's Bid.
- d. Instructions to Bidders.

Section 1424. Year 2000 Compliance – Performance Covenants.

a. Concessionaire represents, covenants, agrees and warrants that it will not permit a Year 2000 problem in its computer system, software or equipment owned, leased, or licensed by it (for its own use), its affiliates or subsidiaries to interfere with its performance under this Agreement. Concessionaire agrees to request, from those of its suppliers whose performance may materially affect its performance hereunder, that each such supplier undertake the same obligation with respect to such material performance. Concessionaire will use reasonable commercial efforts to cooperate and share information to further comply with this section, and to minimize the impact of any circumstance indicating a possible obstacle to such compliance and the steps being taken to avoid or overcome the obstacle.

b. A "Year 2000 problem" used in paragraph A means a date-handling problem relating to the Year 2000 date change that would cause a computer system, software or equipment to fail to correctly perform, process and handle date-related data for the dates within and between the twentieth and twenty-first centuries and all other centuries.

Section 1425. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Agreement.

Section 1426. Acknowledgement of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms of this Agreement shall be fairly construed and the

usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement the day and year first above written.

Pursuant to City of St. Louis Ordinance _____ approved on the _____ day of _____, 2000.

The foregoing Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 2000.

THE CITY OF ST. LOUIS

Commission Chairman
and Director of Airports

Date

APPROVED AS TO FORM:

COUNTERSIGNED:

City Counselor Date
City of St. Louis

Comptroller, Date
City of St. Louis

ATTEST:

Register, Date
City of St. Louis

The foregoing Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting

on _____, 2000.

Secretary,
Board of Estimate & Apportionment

Date

A BACKRUB COMPANY

Title: _____

Date: _____

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
06/16/00	06/16/00	T&C		
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
07/14/00			07/21/00	07/21/00
ORDINANCE	VETOED	VETO OVR	SIGNED BY MAYOR	
65014			08/02/00	